

9

ADDRESS OF
CHARLES L. BROWN
PRESIDENT JUDGE
MUNICIPAL COURT OF PHILADELPHIA
AT
NATIONAL CONFERENCE OF
PROBATION OFFICERS
PITTSBURGH, PENNA.
JUNE, 1917

I esteem it a privilege to address this National Body, representing Probation Officers, Court Officials and Judges of the Courts. I am glad indeed to have the opportunity of telling you how the Probation Officer can help the Judge on the bench.

In the last three years many thousands of social problems have been presented to me for solution, as President Judge of the Municipal Court of Philadelphia. I would most certainly have been at a loss, had it not been possible for me to have, in the first place, the reports of our Probation Officers, who had investigated the cases, and then to have been able to turn over the carrying out of the Court's decision to the Probation Department.

The Social Court should drop red tape, and investigate and supervise thoroughly.

For the proceedings of the Social Court differs in two great essentials, from the proceedings of the rest of the courts of the land. (1) It has at its call a body of officials, men and women, whose duty it is to guide the conduct, and to influence constructively, the lives of those individuals whom the Court places under their supervision. (2) The usual legal routine and forms of the other Courts have been modified and are in part ignored.

Originally, as you know, probation was a substitute for prison commitment, a method by which the first offender could be given another chance. It has grown into a system of Court procedure, and into a juridic policy, that has worked a marvelous and beneficent change in our whole attitude to the clients of the Misdemeanants, as well as the Criminal Courts.

Probation is not only a substitute for prison commitment.

All the leverage within the new system, all its constructiveness lies in the probation arm of the law. It is the Probation Officer therefore who supplies all its effectiveness. I have then a comprehensive task indeed should I detail to you what the Probation Officer can do for the Judge.

The Probation Officer has a grave responsibility to the Court. His investigation clarifies the facts, and illumines the statements of the defendant and plaintiff at the hearing. Even the decisions of the Court often are in reality orders for the Probation Officers to carry out and make effective.

Four cardinal principles of probation:

1. Thorough investigation before hearing.
2. Thorough supervision.

As I see it, the Probation Departments play a quadruple role in the work of the Courts.

1. As co-ordinators and organizers of specific information to make the Courts' investigations effective.
2. As a correlating force that will bring the community forces together in the solution of the individual problems.



Digitized by the Internet Archive
in 2015

https://archive.org/details/addressofcharles00brow_0

3. Interpreting legal and judicial procedure to the citizen.

3. As interpreters to the lay community of legal methods, and of judicial attitude. Here I mean not so much the clients of the court, as I mean the educated public, Social Workers and professions dealing with the Court.

4. Enlarging the value of the Court to the citizen.

4. As moulders of the Social Court system to meet new needs.

The first two functions of the Probation Department of the Courts you are all, more or less, familiar with. These are the every day functions and the functions that bring most practical results.

(1) *As co-ordinators and organizers of specific information to make the Court's investigations effective.*

The Probation Department of a Court, by its investigations, straightens out many dark tangles of fact, and enables the Judge to administer justice, not only promptly, but with a finer discrimination. It allows for a more definite procedure. For the Judge has before him a detailed and authenticated report upon questions that are likely to come up at the hearing. In the Social Court it is fairly easy to forecast what questions the Judge will need settled in any given case.

If the client is to have the advantage of a well weighed decision, that has human value, the Court must be familiar with the situation at the hearing, because the problems before the Court are family problems rather than problems of law. I am glad therefore that our Court has borrowed from the method of social work the method of thorough advance investigation. But we are careful to discard information that may lead to a pre-established judgment against the character of the individual on trial. The Probation Department gives to the Court such information as is needed in the judicial determination of the case, reserving for the social record the data that will enable the Probation Officer to know how to deal with the individual on probation.

No decision should be made by the Judge in a Social Court without prior investigation.

I believe in the careful preparation of a case for Court. It facilitates the purpose for which the new Court was wisely established—the expedition of justice and the prevention of delay. Speedy justice is all important to the client of the Court, whose whole life and well being, for the time, hangs upon the outcome of his or her case.

Our Court has to that end adopted the system of having reports presented at Court through one channel, that of a Court Representative, or a Probation Officer especially detailed for the purpose. But we in our Court, have not tried to eliminate the report of individual Probation Officers in all cases. The human equation, as well as substantial justice, often demands that the Probation Officer should be present.

(2) *As a correlating force that will bring the community forces together in the solution of the individual problems.*

Do not substitute probation red tape for the legal red tape that has been discarded.

I wish to make a plea here for the handling of each case as an individual problem, waiving when necessary all routine, whether of Court or Probation Department. Let us by no means substitute for the legal proceeding rules of evidence, etc., which we have discarded, probation formulae that will prove trying and cumbersome to either plaintiff or defendant.

A Probation Officer should not regard his Probationers as so many police charges.

I need not tell you that the Probation Officers should think of his, or her, task as a task of surveillance—as a police duty. For if the “policing” of probationers is the light in which the task is seen, then very little service is rendered to the Judge.

Still, in many cases, the policing of probationers is very important, as in all the cases of old offenders, or of men who have committed property crimes, etc.

The Probation Officer is the Judge's delegate.

But, remember, the Probation Officer is a judicial officer with authority delegated from the Judge.

When a man or a woman is placed under probation, the very act of so doing means that no complete judicial decision has been made. In the nature of the case, it could not be made, for the decision depends upon future behavior. Therefore a grave responsibility is placed upon the Probation Officer in charge of the probationer, viz: the responsibility of formulating a constructive plan for the rehabilitation of the man or woman in his charge—not only that—but the plan must include fitting the individual back into his or her family, or reorganizing the family life for the benefit of the individual and society.

Positive probation by the Judge from the Bench for Americanization is important.

So much has been said recently of positive probation, or a probation outlined directly by the Judge from the Bench. I am a believer in positive probation whenever it can be used. I think, for instance, it has a teaching power for the rest of the community, and the people present at the hearings, as well as for the individual. I think it highly important, for example, when a man has trouble with his family, because he has been born abroad and does not understand American ways and customs, that part of his probation, as ordered by the Judge, should consist of an English course in a night school, where he may be able to prepare himself for American life as a pre-requisite for citizenship.

I believe in positive probation for children. Medical examination and treatment is another form of positive probation that is an integral part of the Court system. But even here I believe the work could be

most effectively done by the Probation Department, which has a much more intimate and thorough knowledge of the case than the Judge. I think positive probation can perhaps be best attained, not by probation from above by the Judge, but by constructive probation in the various Social Service Divisions of the Court.

Substitute constructive probation by the Probation Officer for probation from above by the Judge.

I would beg leave to substitute constructive probation by Probation Officers for positive probation by the Court. In a system of constructive probation the Probation Officers can do better work if such work is departmentalized.

Probation Officers should specialize.

Problems of employment—social and health problems.

Efficiency should not be substituted for humanity.

A great constructive force in the work with non-supporting husbands, and with older boys and girls in the Juvenile Court, and with Misdemeanants boys, is to find work for them. Our Court has departmentalized this effort into a Labor Bureau, just as we have departmentalized the mental and medical probation. We have found that division of work in this manner is a great aid to constructive probation. It develops the Probation Officer's capacity. I feel that a Probation Officer can be of the greatest assistance to the Court, and develop a maximum efficiency, when he or she concentrates upon a particular phase of the Court's work. But we must not forget that justice must be humane as well as efficient. It must have a quality of softness tempering the firmness. No matter how much we may divide and subdivide our work to attain speedy and efficient justice for our clients, we must not forget that they are individuals, and that their lives are also part of the family to which they belong, and that of a social group, whose interests are vital to them.

(3) *As interpreters of the lay community of legal methods and in judicial attitude.*

The American Social Courts differ from all other Courts in the United States and elsewhere.

I wish to preface my statement concerning the third function of the Probation Department. I would like you who are Social Workers and Probation Officers to see that while to you the Social Courts, Domestic Relations, Juvenile, Criminal Misdemeanants, appear well established and altogether conservative, filling a definite need, to many others, lawyers and Court Officials, many of the proceedings are radical. With them many of our new court processes still have to make a way for themselves, and to justify their further development, for we have dropped many procedures that are vital to men who are strongly in favor of the Anglo-Saxon procedure, where the rights of the individual in Court are guarded even against himself. Some of the proceedings intended as such safeguards we have dropped entirely, others we ignore, among them the rules of evidence—the jury, and many

forms less familiar. The hearing of witnesses is also a rare thing in the Court.

We have always prided ourselves in our Anglo-Saxon Courts, that the Judge is entirely a judicial officer, unlike the Judge in Continental Courts (France is a special instance). In the United States the Judge is not a prosecuting officer. In our own Social Courts, however, we have taken a conservative step in the direction of the French methods. The Judge sends out a Probation Officer as his delegate to collect information for the plaintiff. Our Anglo-Saxon sense of law makes it a proceeding for the plaintiff and, unlike the French method, which is directly a proceeding against the defendant. Nevertheless this is a long step away from the old method of examination and investigation of witnesses.

Their administration of justice establishes new principles.

I present this phase of the situation so completely that you may fully understand the Judge's position to the reports of the Probation Officers, and that you may understand how important it is that they err on the side of fairness, even where brutal and abusive husbands are concerned, or neglectful fathers and mothers are concerned.

The Judge of the Social Court must safeguard the vast power placed in his hands.

It necessarily follows that the Judge with so much power in his hands will safeguard and check the action of his Court wherever possible. The organization and individuals that deal with the Court should be educated by the Probation Officer to see his reasons and understand the psychology of the situation, and that the principals of justice often require a due hesitancy in action and reserve of decision.

The education of the public, by the Probation Officer, must be constant, for our Courts are large, handling many people, and the contact with individuals and organizations is constantly shifting and changing.

I wish to speak of one particular phase of Court work which deals with the educational aspect of the Probation Officer's work only. In many of our Court cases the action is recurrent. A series of prosecution is at times necessary to compel the husband to provide for his wife or take care of his neglected children. But the fundamentals of justice demand that neither Domestic Relations Court nor the Juvenile Court, nor the Probation Officers of those Courts, instigate the new action. Sound justice requires that the injured person, or the individual who is sponsor for the child, undertake this new action. Neither the Court nor officials of the Court can act as prosecutors, although it may often seem desirable. Too important a principle of American justice is involved to permit the Court to take action of this character. But the

The Court and the Probation Officer must avoid acting as prosecutor.

Probation Department should interest itself to see that there are agencies in the community who will take such action. Indeed it should, I believe, be instrumental in the establishment of such co-operative groups—as court departments of already existing agencies.

(4) *As moulders of the social court system to meet new needs.*

The last office that I conceive the Probation Department to have, in its relation to the Judge, is that of moulder of the new social justice to meet new needs. Our whole system of American law, which is derived from English law, is founded upon the rights of the individual. The right of the individual as against the ruling power is magnified. Under the old system of Greek and Roman law, the rights of the state, as against the individual, were held paramount. As a result great state paternal systems over the individual were developed in those ancient lands. The crying need, under modern conditions, for a legal system that would recognize the rights of society and the social group, such as the community and the family, has resulted in the incorporating into our American legal system of the Social Courts, such as the Domestic Relations and Juvenile Courts, which review their cases, in the light of the rights of society and the family. When we consider it in that light, it is a wonderful pioneering effort. Thus in America we have a legal institution, which takes the place between the ancient individualistic English Law Courts, and the legal system promulgated by the Romans.

It is a new institution, and an institution alien to the Anglo-Saxon juridic processes. Therefore, the Judge must necessarily be the restraining force that adapts a new legal system to the old, and the Probation Department must be ever ready with a new vision of practical needs so that the system may develop and grow.

I wish to make a point here. I have told you how we established in America a new system of justice—family justice. Here lies the strength as well as the weakness of the system—family justice. It may to a degree place a premium upon justice, giving the advantage to mothers of families in non-support cases. The individual, and the individual rights, no longer stand silhouetted clearly and sharply against the background as a problem for the Judge to settle. As a part of the scene the Court has in mind the family. The Probation Department, however, must see that the interests of these individuals, wives and others, who have no family, is conserved. Likewise the problem of the physically weak, the unwell, is apt to receive attention by a Court having such a vast machinery, and so many allied organizations for the

The Social Court is the Court for the family. It administers justice to the family as well as to the individual.

The rights of the individual must not suffer through family justice.

The Social Court is a Court for the benefit of those who err or suffer because they are not well. The physically well should not be neglected.

Court reforms formerly came from without, but Court reforms can now come from within, from the Probation Department.

Court's power is a sacred trust.

handling of the problems of such people. Let us remember, however, that the strength of the nation lies in its men and women of sound physique and that their interests, whether they be wives, sons or daughters, must be thought of in the same plane with the more fortunate physically. It is far from my desire to make a plea against sympathy, but rather to make a plea for a well rounded justice.

Every day in his work the Probation Officer turns up a grist of new material, throwing new light upon old problems, and revealing altogether new social problems that require new methods. In former times reforms of legal procedure never came from within. Charles Dickens, the novelist, was one of the greatest reformers of the law of the 19th century. In his novel, "Bleak House," he attacked the Chancery^o Courts of England. His pictures of street waifs—"Joe" and of the boys in *Oliver Twist*—brought the Juvenile Courts nearer to realization after the work of the S. P. C. C. had begun. Thus previously all reform came from outside, because the Courts had no social spirit and no social guidance. But now the Courts have such spirit and such guidance, and a means through which to carry it out—the Probation Division of the Court.

Therefore I wish to impress upon you that the supreme function of the Probation Department, aside from the direct ones of ameliorating suffering among the clients of the Court—which should ever be in the foreground—is to reform social conditions and supply legal solutions for such conditions as need correction and reformation.

I want, in conclusion, to call your attention to the most important part of this address: that is, the power of a Court. The office of a judge is the most important office to which the people elect a man. It is the only function in government that is authorized to deprive a citizen of those privileges granted him by the Declaration of Independence—"Life, Liberty and the pursuit of Happiness." The people trust the man whom they elect to this great office, and he should ever be careful to guard the rights of the individual against the encroachment of society, as well as to look after the interests of society against the encroachment of the individual.

Judges, in order to conserve the rights of the people, appoint probation officers, who are the arm of the Court, to obtain information, in order that the judge may temper justice with mercy. When you perform your function properly, you assist the judge in doing justice to the people who come before the Court. If you are harsh in place of

being kind, you do a wrong and your information to the Court may perpetrate an injustice. Do not become too self-important in your office, and imagine that you are the Court, but ever be considerate of the rights of your charges.

